

OFFICE OF THE GENERAL COUNSEL

M E M O R A N D U M

TO: Chief, Dockets Division

FROM: Associate General Counsel, Litigation Division

SUBJECT: Time Warner Entertainment Company, L.P. v. FCC & USA, No. 94-1066. Filing of a new Petition for Review in the United States Court of Appeals for the District of Columbia Circuit

DATE: February 8, 1994

Docket No(s). MM 92-266

File No(s).

RECEIVED

FEB 14 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

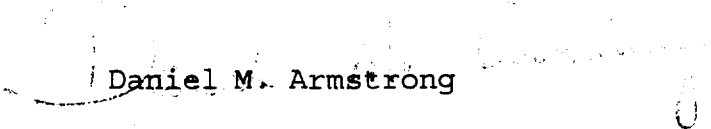
This is to advise you that on January 28, 1994, Time Warner Entertainment Company, L.P., filed with the United States Court of Appeals for the District of Columbia Circuit:

X Section 402(a) Petition for Review
 Section 402(b) Notices of Appeal

of the following FCC decision: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (Third Report and Order), FCC 93-519, released November 24, 1994. Challenge to Third Report and Order in which the FCC ruled that cable operators whose rates are subject to regulation under the 1992 Cable Act must select the same method for initial review of both basic service rates and cable programming service rates.

Due to a change in the Communications Act, it will not be necessary to notify the parties of this filing.

The Court has docketed this case as No. 94-1066 and the attorney assigned to handle the litigation of this case is Laurence N. Bourne.


Daniel M. Armstrong

cc: General Counsel
Office of Public Affairs
Shepard's Citations

OFFICE RECORD

Received
JAN 31 1994
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

OFFICE OF
GENERAL COUNSEL

No. **94-1066**

94-1066

TIME WARNER ENTERTAINMENT COMPANY, L.P.,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

PETITION FOR REVIEW

Time Warner Entertainment Company, L.P. ("TWE"), by its attorneys and pursuant to 47 U.S.C. § 402(a) and Rule 15 of the Federal Rules of Civil Procedure, hereby petitions this Court for review of the Third Report and Order of the Federal Communications Commission in Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (MM Docket No. 92-266), FCC 93-519 (the "Third Report and Order"), which was released on 24 November 1993 and published in summary form in the Federal Register on 30 November 1993, 58 Fed. Reg. 63097 (1993). A true copy of the Third Report and Order is attached hereto as Exhibit A.

VENUE

Venue in this Court is proper under 28 U.S.C. § 2343.

INTEREST OF THE PETITIONER

TWE, a Delaware limited partnership in which Time Warner, Inc., a publicly traded Delaware corporation, indirectly holds a majority interest, is comprised principally of three unincorporated divisions: Time Warner Cable, which is the second largest operator of cable television systems in the United States, operating systems in approximately 1,600 franchise areas throughout the nation; Home Box Office, which owns and operates pay television programming services, including the Home Box Office service and Cinemax; and Warner Bros., which produces and distributes motion pictures and television programs.

TWE was a party to the proceedings before the FCC and is directly and materially affected by the regulations challenged herein.

GROUND'S FOR RELIEF

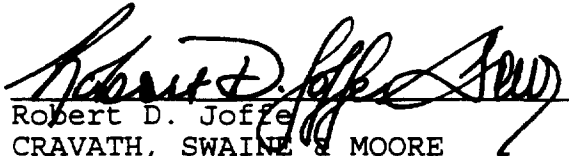
The FCC's rate regulation rules under the 1992 Cable Act permit cable operators to elect to demonstrate that their rates for basic service and cable programming service are in compliance with the requirements of that act by either a "benchmark" method or a "cost-of-service" showing. In the Third Report and Order, review of which is sought by this petition, the FCC ruled that cable operators whose rates are subject to regulation under the 1992 Cable Act must select the same method for initial review of both basic service rates and cable programming service rates. TWE submits that this determination is arbitrary, capricious,

abusive of discretion, and contrary to law. In particular, and without limitation, the FCC's decision is contrary to the 1992 Cable Act and exceeds the agency's authority under that act.

RELIEF REQUESTED

TWE respectfully requests that the Court vacate and set aside the Third Report and Order, and that the Court grant such other and further relief as may be proper and just in the circumstances.

Respectfully submitted,



Robert D. Joffe
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28 January 1994